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CITATIONS

689347—46

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 870

STANLEY TAYLOR AND EVELYN FLYNN, PETITIONERS

v.

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The District Court rendered no opinion. Its order appears at pp. 15–21 of volume II of the record. The opinion of the Circuit Court of Appeals has not yet been reported but is set forth at pp. 149–152 of volume II of the Record.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 17, 1945 (R. II, p. 153). A petition for rehearing was denied January 16, 1946 (R. 154). The petition for a writ of certiorari was filed on February 19, 1946. The jurisdiction of this Court is invoked under section

240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an order entered in civil contempt proceedings instituted for violations of a final injunction decree [1] is an appealable order where the order imposes no punishment but merely directs the defendant to correct and undo the violations under pain of being punished for contempt if he fails to comply with the order within a specified period.

STATUTE INVOLVED

Section 128 of the Judicial Code (28 U. S. C. 225) provides in pertinent part as follows:

> *Appellate jurisdiction*—(a) *Review of final decisions.*
>
> The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions—
>
> First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 345 of this title.
>
> * * * * *
>
> (b) *Review of interlocutory orders or decrees of district courts.*
>
> The circuit court of appeals shall also have appellate jurisdiction—
>
> First. To review the interlocutory orders or decrees of the district courts * * *

[1] In this case an appeal had been taken from the injunction decree and was afterward determined adversely to the appellant, petitioner here. See Pet., p. 4, n. 1. The appeal did not operate as a stay.

which are specified in section 227 of this title [relating to interlocutory injunctions and decrees relating to receiverships].

* * * * *

STATEMENT

On March 6, 1943 at the suit of the Price Administrator the District Court issued a permanent injunction restraining the petitioners from demanding or receiving rents in excess of those prescribed by Maximum Rent Regulation No. 28 (7 F. R. 4913) and from otherwise violating that regulation (R. I, p. 95). On December 13, 1943 the Price Administrator filed a motion to have the petitioners adjudged in civil contempt for having violated the injunction at various times subsequent to July 30, 1943 (R. II, p. 8). The court, after hearing, found that petitioners had violated the injunction by demanding and receiving rents in excess of those permitted by the Maximum Rent Regulation and entered an order on February 1, 1944 directing petitioners to reduce immediately all rents to amounts not exceeding the maximum rents permitted by the regulation and within ten days to refund all amounts collected in excess of such maximum rents and to furnish proof before the court on March 31, 1944 of compliance with the order (R. II, p. 15). The order recited that the court reserved "the power to commit said defendants to jail until they comply with the terms of this order if it appears that they have not fully complied with the terms of this order

within the time" therein specified. By the same order, a fine of $500 was imposed on petitioner Stanley W. Taylor to reimburse the Price Administrator for the cost of prosecuting the contempt proceedings, subject to the condition that if the petitioner complied with the injunction for a period of sixty days the fine would be remitted. The fine was remitted on April 13, 1944 (R. II, p. 150).

From this order the petitioners appealed to the Circuit Court of Appeals (R. II, pp. 21, 22). That court on motion of the Price Administrator (R. II, p. 147) dismissed the appeal on the ground that the order was not appealable (R. II, p. 149).

ARGUMENT

The only question presented by the petition is whether the order from which petitioners endeavored to appeal to the court below is an appealable order. The court below correctly held that it is not.

1. It may be conceded that a final order, entered in civil contempt proceedings after the judgment in the main cause has become final, is an appealable order, as has been held or stated by several circuit courts of appeals. *Clay* v. *Waters,* 178 Fed. 385, 392 (C. C. A. 8th); *Enoch Morgan's Sons Co.* v. *Gibson,* 122 Fed. 420 (C. C. A. 8th); and see *International Silver Co.* v. *Oneida Community,* 93 F. 2d 437 (C. C. A. 2d). Compare, *Parker* v. *United States,* 153 F. 2d 66 (C. C. A. 1st). The respond-

ent does not question the correctness of these decisions.[2]

The order in the present case, however, is not of the same variety, and there is therefore no conflict of decisions. The only statute under which the jurisdiction of the court below could conceivably have been invoked is Section 128 of the Judicial Code (28 U. S. C. 225). Under that section only final decisions are appealable. The order involved in the present case is not such a decision. It directs the reduction of rents and the refunding of overcharges and, so far as here pertinent, merely "reserves the power to commit said defendants to jail until they comply with the terms of this order if it appears that they have not fully complied with the terms of this order within the time specified" (R. II, p. 20). An order thus adjudging a contempt but reserving final punitive or remedial action with respect to the contempt is not a final order. *In re Eskay,* 122 F. 2d 819, 824 (C. C. A. 3d). It does "no more than to interpret the prior injunction" and to direct further steps for its enforcement. *In-*

[2] An order adjudging one in civil contempt, entered before judgment in the main cause, is interlocutory and therefore not appealable, *Fox* v. *Capital Co.*, 299 U. S. 105; *Perfection Cooler Co.* v. *Rotax Co.*, 296 Fed. 464 (C. C .A. 2d). But civil contempt proceedings instituted after the judgment in the main cause has become final seem to be independent proceedings so as to render the final order therein appealable. Compare, *Cobbledick* v. *United States*, 309 U. S. 323 at pp. 328–329.

ternational Silver Co. v. *Oneida Community, supra,* at p. 441.

2. It is true that the order also imposed a fine of $500 on petitioner Stanley W. Taylor subject to the condition that if he complied with the order within sixty days the fine would be remitted (R. II, pp. 20–21). But as the court below observed (R. 150), even if such an order might be deemed final, "any question with reference to this assessment is now moot as the assessment was remitted to appellant April 13, 1944."

CONCLUSION

The order which petitioners sought to have reviewed by the court below was clearly not appealable and the court below correctly so held. There is no conflict of decisions and no reason exists for granting a writ of certiorari.

Respectfully submitted,

J. HOWARD MCGRATH,
Solicitor General.

MILTON KLEIN,
Director, Litigation Division,

DAVID LONDON,
Chief, Appellate Branch,

ALBERT DREYER,
Chief, Trial Litigation Branch,
Office of Price Administration, Washington, D. C.

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